

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**SCOTT REHBERG, WILLARD ALLEN
RILEY, and MARIO RONCHETTI,
individually and on behalf of all similarly
situated individuals,**

Plaintiffs,

-v-

**FLOWERS FOODS, INC. and FLOWERS
BAKING CO. OF JAMESTOWN, LLC,**

Defendants.

No. 3:12-cv-00596-MOC-DSC

**MEMORANDUM AND
RECOMMENDATION**

THIS MATTER is before the Court on Defendants’ “Motion To Dismiss Plaintiffs Burks, Lewis, McClain, Moucka and Ring” (document #84). Defendants move for dismissal based upon these Plaintiffs’ failure to respond to written discovery requests and to appear for depositions.

This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1), and the Motion is now ripe for the Court’s consideration.

On June 9, 2014, the Honorable Max O. Cogburn, Jr. ordered Plaintiffs “to show cause why they did not respond to those discovery requests....” “Order” (document #81). The Court “allowed [Plaintiffs] 14 days within which to fully comply with defendants’ discovery request.” Id. Judge Cogburn warned Plaintiffs “that failure to comply and Show Cause may result in the imposition of sanctions, which could include dismissal of their claims with prejudice.” Id.

On June 27, 2014, and after Plaintiffs again failed to respond to the discovery requests or otherwise comply with Judge Cogburn's Order to Show Cause, Defendants filed the subject Motion to Dismiss.

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the undersigned advised Plaintiffs, who are proceeding pro se, that they have a right to respond to Defendants' Motion. The Court also advised Plaintiffs that "failure to respond may result in Defendants being granted the relief they seek, that is, the **DISMISSAL OF THE COMPLAINT WITH PREJUDICE.**" "Order" entered June 27, 2014 (document #86) (emphasis in the original). The Court allowed Plaintiffs until July 21, 2014 to respond to the Motion to Dismiss.

As of this date, Plaintiffs have completely ignored the Court's Orders and have not responded to the discovery requests or the Motion to Dismiss.

RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that Defendants' "Motion To Dismiss Plaintiffs Burks, Lewis, McClain, Moucka and Ring" (document #84) be **GRANTED**.

NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. §636(b)(1)(c), written objections to the proposed findings of fact and conclusions of law and the recommendation contained in this Memorandum must be filed within fourteen (14) days after service of same. Failure to file objections to this Memorandum with the District Court constitutes a waiver of the right to de novo review by the District Judge. Diamond v. Colonial Life, 416 F.3d 310, 315-16

(4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir. 1989). Moreover, failure to file timely objections will also preclude the parties from raising such objections on appeal. Thomas v. Arn, 474 U.S. 140, 147 (1985); Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Wells, 109 F.3d at 201; Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Order to the Honorable Max O. Cogburn, Jr.; to the parties' counsel; and to the pro se Plaintiffs at the following addresses:

Elmer D. Burks, Jr.
Route 52, Box 23
Kimball, West Virginia 24853

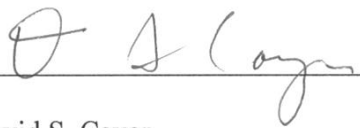
Robert McClain
626 Piedmont Way
Burlington, North Carolina 27302

John Lewis
92 Self Lane
Fayetteville, West Virginia 25840

Matthew Moucka
20990 Hwy. 73
Albemarle, North Carolina 28001

Brandon Ring
32 Oriole Lane
Galax, Virginia 24333

SO RECOMMENDED AND ORDERED.



David S. Cayer
United States Magistrate Judge



